

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1165

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-1-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This article must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this article. It may contain other information as well.

(d) The document must be typewritten or printed, legible, and otherwise suitable for processing.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

- (1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;
- (2) if directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) if the corporation is in the hands of a receiver, trustee, or other

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court appointed fiduciary, by that fiduciary; **or**

(4) for purpose of annual or biennial reports, by:

(A) a registered agent;

(B) a certified public accountant; or

(C) an attorney;

employed by the business entity.

(g) Except as provided in subsection (k), the person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. The document may but is not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an ~~acknowledgement~~, **acknowledgment**, verification, or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(j) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(k) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

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(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

SECTION 2. IC 23-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 7 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

(f) A corporation may give notice of a shareholders' meeting under this section by mailing the notice, postage prepaid, through the United States Postal Service, using any class or form of mail, if:

(1) the shares to which the notice relates are of a class of securities that is registered under the Exchange Act (as defined in IC 23-1-43-9); and

(2) the notice and the related proxy or information statement required under the Exchange Act (as defined in IC 23-1-43-9) are available to the public, without cost or password, through the corporation's Internet web site not fewer than thirty (30) days before the shareholders' meeting.

SECTION 3. IC 23-1-38.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The following

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definitions apply throughout this chapter:

(1) "Converting entity" means:

- (A) a domestic business corporation or a domestic other entity that adopts a plan of entity conversion; or
- (B) a foreign other entity converting to a domestic business corporation.

(2) "Other entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and that is not described in subdivision (1) or (3).

~~(2)~~ (3) "Surviving entity" means the corporation or other entity that is in existence immediately after consummation of an entity conversion under this chapter.

SECTION 4. IC 23-1-38.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. This chapter may not be used to effect a transaction that:

- (1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;
- (2) converts a nonprofit corporation to a domestic corporation or other ~~business~~ entity; or
- (3) converts a domestic corporation or other ~~business~~ entity to a nonprofit corporation.

SECTION 5. IC 23-1-38.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) After conversion of a domestic business corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

- (1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;
- (2) state the type of other entity that the surviving entity will be;
- (3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and
- (4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case,

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provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic business corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the other entity; and

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity, an officer or another authorized representative of the other entity must execute the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the other entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on

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behalf of the foreign other entity by any officer or authorized representative. The articles must:

- (1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;
- (2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;
- (3) set forth a statement that the conversion of the other entity was duly approved in the manner required by its organic law; and
- (4) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(e) After the conversion of a foreign other entity to a different foreign other entity has been authorized as required by the laws of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

- (1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;
- (2) set forth the jurisdiction under the laws of which the other entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;
- (3) set forth a statement that the conversion of the other entity was approved in the manner required by its organic law; and
- (4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(f) The articles of entity conversion must be delivered to the secretary of state for filing and take effect at the effective time provided

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in IC 23-1-18-4.

(g) If the converting entity is a foreign other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

(h) After the conversion of a foreign corporation to a different foreign other entity has been authorized as required by the law of the foreign jurisdiction, the articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

- (1) set forth the name of the foreign corporation immediately before the filing of the articles of entity conversion and the name to which the name of the foreign corporation is to be changed, which must satisfy the requirements of IC 23-1-23-1;**
- (2) set forth the jurisdiction under the law under which the foreign corporation was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;**
- (3) set forth a statement that the conversion of the foreign corporation was approved in the manner required by its organic law; and**
- (4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.**

SECTION 6. IC 23-1-40-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this section, "other business entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic corporations may merge with or into

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one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

- (1) Each domestic corporation that is a party to the merger complies with the applicable provisions of this chapter.
- (2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.
- (3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

- (A) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.
- (B) The terms and conditions of the merger.
- (C) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.
- (D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.
- (E) If a limited liability company is to be the surviving entity

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and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) One (1) or more other business entities may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or under the laws of another jurisdiction, if the following requirements are met:

(1) Each business entity that is a party to the merger complies with the applicable provisions of this chapter.

(2) Merger is permitted by the laws of the jurisdiction under which each other entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(3) The merging entities approve a plan of merger that sets forth the following:

(A) The name and jurisdiction of formation, organization, or incorporation of each other business entity intending to merge, and the name of the surviving or resulting other business entity into which each other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the partnership interests, shares, obligations, or other securities of the surviving entity or other business entity, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire partnership interests, shares, obligations, or other securities of the surviving entity or any other business entity, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

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(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth any other provisions related to the merger.

~~(d)~~ **(e)** The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

~~(e)~~ **(f)** Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity, and the merger does not become effective under this chapter, unless:

- (1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and
- (2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity.

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

~~(f)~~ **(g)** This section, to the extent applicable, applies to the merger of one (1) or more domestic corporations with or into one (1) or more other business entities.

~~(g)~~ **(h)** Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic corporations with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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